IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Bail Appl..No. 4958 of 2007()

CRMP.1753/2007 of DISTRICT COURT, KOTTAYAM
CRIME NO.146/07 OF KIDANGOOR POLICE STATION

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PETITIONER/ACCUSED

DEEPA RAJAN, AGED 34 YEARS,
W/O RAJU P.G., PARUTHIYAMKUNNEL HOUSE,
THOTTUVA AREA, KURAVINLANGADU,
MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REP. BY DIRECTOR
GENERAL OF PROSECUTION, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KIDANGOOR POLICE STATION, KOTTAYAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No.4958 OF 2007

Dated this the 6th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner – a woman, is alleged to have committed the offences punishable under Secs.302 and 309 of the IPC. She had allegedly jumped into a river along with her children. She was saved by persons who came to know of the incident; but the children could not be saved. They were dead by the time when they were taken out of the river. A crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is submitted that there is no tangible data to support the allegation that the petitioner had jumped into the river along with her children. In these circumstances, it is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the totality of materials available now do convincingly point to the complicity of the petitioner under Secs.302 and 309 of the IPC. This is not a fit case where powers under Sec.438 of the Cr.P.C. can or ought to be invoked, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. In view of the nature of contention raised by the learned counsel for the petitioner that it could only be an accidental fall of the petitioner with the children into the river, the learned Public Prosecutor was requested to marshal all the facts and point out this Court the circumstances which would indicate the culpability of the petitioner. I shall scrupulously avoid a detailed discussion on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I have taken note of the alleged statement given by the petitioner to the Doctor before whom she was produced shortly after she was recovered from the river. I am satisfied that this is not a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked.

5. I must alertly remind myself of the nature and quality of the jurisdiction under Sec.438 of the Cr.P.C. Even the fact that

if the petitioner, after arrest, had come to this Court for regular bail, she may have been granted regular bail cannot ipso facto persuade this Court to invoke the jurisdiction under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction and seek the compassion of Sec.437 of the Cr.P.C. to claim bail.

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge